

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 22, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FOX'S SPOKANE DENTURE CLINIC,
INC., a Washington corporation;
MARICONDIA DENTAL,
PROFESSIONAL CORPORATION d/b/a
A.Q. DENTURE AND DENTAL
IMPLANT CENTER, a Nevada
professional corporation,
Plaintiffs,
v.
NOVEL TECHNOLOGIES, INC., d/b/a
IVORY DIGITAL DENTURES, a
Canadian corporation,
Defendant.

No. 2:21-CV-00080-SAB

**ORDER GRANTING MOTION
FOR DEFAULT JUDGMENT**

Before the Court is Plaintiffs' Motion for Default Judgment Against Defendant Novel Technologies, Inc. D/B/A Ivory Digital Dentures, ECF No. 14. The motion was considered without oral argument. Plaintiffs are represented by Caleb Hatch and Robert Carlson. Defendant has not appeared in this case.

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ORDER GRANTING MOTION FOR DEFAULT JUDGMENT # 1

1 Having reviewed the briefing and the case law, the Court grants Plaintiffs’
2 motion.

3 **Background**

4 The following facts are taken from Plaintiffs’ Complaint, ECF No. 1.

5 Plaintiffs Fox’s Spokane Denture Clinic, Inc. (“Fox’s Spokane”) and
6 Maricondia Dental, Professional Corporation d/b/a A.Q. Denture and Implant
7 Center (“A.Q. Denture”) are denture clinics—Fox’s Spokane is located in
8 Spokane, Washington, whereas A.Q. Denture is located in Henderson, Nevada.
9 Defendant Novel Technologies, Inc. d/b/a Ivory Digital Dentures is a corporation
10 based out of Ontario, Canada.

11 In October 2018, Plaintiffs and Defendant attended a denture professional
12 trade show in Las Vegas, Nevada. At this trade show, Defendant, through its
13 employee representatives and/or owners, Sholomo Sharer and Benjamin Sharer,
14 marketed a 3D denture system to Plaintiffs. Specifically, Plaintiffs allege that
15 Defendant told them, both orally and in its written marketing materials, that the 3D
16 denture system contained a 3D printer, resin, and a face mapping tool; that the
17 system could produce full, complete, workable, and superior denture sets in three
18 hours or less; and that the entire denture process, from initial visit to denture
19 fitting, would take under half a day to complete. Plaintiffs also allege that
20 Defendant represented that the dentures created with this system were completely
21 safe, as hard as Lucitone 199 resin, and would be made of materials that were FDA
22 approved.

23 Based on these representations, Plaintiffs entered into separate contracts
24 with Defendant to purchase the 3D denture system for \$66,000. However,
25 Plaintiffs allege that the systems have not worked as advertised—in fact, Plaintiffs
26 state that the systems have been unable to manufacture even a *single* complete set
27 of properly fitted dentures. Plaintiffs also allege that Defendant’s system has not
28 worked along any other advertised dimension, including the strength of the resin,

1 the FDA approval, the safety of the resulting dentures, the efficacy of the included
2 tools, and the time/cost/effort required to use the system.

3 Plaintiffs filed their Complaint on February 4, 2021. ECF No. 1. Plaintiffs
4 alleged claims for breach of contract, breach of the implied covenant of good faith
5 and fair dealing, unjust enrichment, fraudulent misrepresentation, negligent
6 misrepresentation, violation of the Washington Consumer Protection Act, violation
7 of the Nevada Deceptive Trade Practices Act, breach of express warranty, breach
8 of implied warranty of merchantability, and breach of implied warranty for a
9 particular purpose.

10 Plaintiffs issued a Summons to Defendant on February 4, 2021. ECF No. 4.
11 But, despite the Summons being returned as executed on February 25, 2021, ECF
12 No. 5, Defendant did not enter a Notice of Appearance. Plaintiffs' process server
13 also submitted a Declaration on April 22, 2021, specifically attesting that he
14 delivered copies of the Summons and Complaint to Benjamin Sharer, the
15 Operations Manager for Defendant. ECF No. 6.

16 On April 23, 2021, Plaintiffs filed a Motion for Entry of Default Against
17 Defendant pursuant to Fed. R. Civ. P. 55 and LCivR 55(a)(1). ECF No. 7. The
18 Clerk's Office entered an Order of Default on April 28, 2021. ECF No. 9. Plaintiffs
19 filed the present motion on March 2, 2022. ECF No. 14. To date, Defendant has
20 still not appeared in this case.

21 **Legal Standard**

22 Fed. R. Civ. P. 55(a) allows a party to move for default judgment if the
23 opposing party "has failed to plead or otherwise defend" the action. Rule 55
24 outlines two methods through which a party can request a default judgment. If (1) a
25 plaintiff's claim is for a certain sum or a sum that can be made certain by
26 computation; (2) the defendant has not appeared; and (3) the defendant is not a
27 minor or an incompetent person, the plaintiff can request default judgment from
28 the clerk's office. However, in all other cases, the plaintiff must instead request

1 default judgment from the court.

2 Under Local Civil Rule 55, the Court utilizes a two-step process for default
3 judgment: first, the party must file a motion for entry of default and obtain an
4 Order of Default from the Clerk's Office. Then, the party must file a motion for
5 default judgment. Here, Plaintiffs have already obtained an Order of Default. ECF
6 No. 9.

7 But, even if entry of default has been made by the court clerk, granting a
8 default judgment is not automatic; rather, it is left to the sound discretion of the
9 Court. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). The Court, in
10 exercising its discretion to grant or deny entry of a default judgment, should
11 consider the following factors: (1) the substantive merits of the plaintiff's claims;
12 (2) the sufficiency of the complaint; (3) the amount of money at stake; (4) the
13 possibility of prejudice to the plaintiff if relief is denied; (5) the possibility of a
14 dispute concerning material facts; (6) whether default was the result of excusable
15 neglect; and (7) the strong policy of the Federal Rules that favors decisions on the
16 merits. *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

17 Discussion

18 Plaintiffs request that the Court enter default judgment against Defendant.
19 Plaintiffs argue that default judgment is warranted because Defendant has failed to
20 appear and defend in the action, despite being validly served with a summons and
21 more than a year elapsing between the filing of the Complaint and the current
22 motion. As part of the default judgment, Plaintiffs request that the Court award
23 Fox's Spokane \$86,900.40 and A.Q. Denture \$79,794.20 in damages. Plaintiffs
24 also request that the Court award reasonable costs and attorney's fees in the
25 amounts of \$11,751.82 to Fox's Spokane and \$10,450.84 to A.Q. Denture.

26 The Court finds good cause to grant the motion. Despite the Federal Rules'
27 strong policy in favor of decisions on the merits, the factors present in this case
28 support the issuance of a default judgment against Defendant. First, Plaintiffs have

1 alleged specific and detailed facts in their Complaint that support the merits of
2 their claims. Second, Plaintiffs allege that they have incurred significant monetary
3 damages as a result of Defendant's actions. Third, though the Court recognizes the
4 possibility that there may be disputed material facts supporting Defendant's non-
5 liability, Defendant has failed to appear and present those facts to the Court,
6 despite being given ample opportunity. Lastly, Defendant has not provided any
7 basis for the Court to conclude that its non-appearance is due to excusable neglect.
8 Thus, especially given the fact that Defendant is a corporation and neither a minor
9 nor an incompetent person, the Court concludes that default judgment against
10 Defendant is warranted.

11 The Court also finds that Plaintiffs have proved their damages with
12 sufficient certainty. Plaintiffs have submitted copies of their Equipment Finance
13 Agreements with Defendant, showing their monthly payments for the 3D denture
14 system, and receipts of their service/administrative fees associated with the
15 equipment. These damages amount to \$86,900.40 for Fox's Spokane and
16 \$79,794.20 for A.Q. Denture. Additionally, Plaintiffs and their counsel attest that
17 they have incurred reasonable costs and attorney's fees amounting to \$11,751.82 to
18 Fox's Spokane and \$10,450.84 to A.Q. Denture. The Court finds good cause to
19 award the requested damages and attorney's fees/costs.

20 Accordingly, **IT IS HEREBY ORDERED:**

21 1. The Clerk's Office is directed to enter a default judgment against
22 Defendant in the above-captioned matter.

23 2. The Court awards Plaintiff Fox's Spokane \$86,900.40 in damages.

24 3. The Court awards Plaintiff A.Q. Denture \$79,794.20 in damages.

25 4. The Court awards counsel for Plaintiff Fox's Spokane fees and costs
26 in the amount of \$11,751.82.

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ORDER GRANTING MOTION FOR DEFAULT JUDGMENT # 5

1 5. The Court awards counsel for Plaintiff A.Q. Denture fees and costs in
2 the amount of \$10,450,84.

3 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
4 this Order, provide copies to counsel, and **close** the file.

5 **DATED** this 22nd day of April 2022.



10 *Stanley A. Bastian*

11 Stanley A. Bastian
12 Chief United States District Judge
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